

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

IN RE:	§	
	§	
BLONDELL LEWIS A/K/A DALE LEWIS	§	CASE NO. 99-51253-13
AND ALTHA JEAN LEWIS,	§	
	§	
Debtors.	§	

MEMORANDUM OPINION

Bank of America (the Bank) seeks recovery of \$566.89 in attorney's fees and expenses incurred in connection with its motion seeking relief from stay filed after confirmation of the Debtors' Chapter 13 plan concerning real property (with improvements) located in Lubbock County, Texas. The Bank and the Debtors announced to the court that they had settled all issues regarding the motion, including the Bank's request for fees and expenses. The Chapter 13 Trustee, Robert Wilson, objects to the agreement because the agreed-upon fees and expenses exceed the standard fees and expenses traditionally allowed creditor's counsel on stay motions.

This court has jurisdiction of this matter under 28 U.S.C. § 1334(a) and 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (b)(2). This memorandum opinion contains the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052 and FED. R. BANKR. P. 9014.

The Bank filed its motion seeking relief from stay because of the Debtors' post-confirmation default on the secured claim of the Bank. The note signed by the Debtors and held by the Bank provides, with respect to attorney's fees, as follows:

If collection on this note is made through a Probate Court or a Bankruptcy Court, or other appropriate legal proceedings, or if after default this note is placed in the hands of an attorney at law for collection, the undersigned promise(s) to pay all costs of such collection, including attorney's fees, if actually incurred, not to exceed ten percentum (10%) of the amount owing on this note at the time of filing claim hereon or date of default, whichever is earlier.

Exh. A. The deed of trust contains an identical provision. Exh. B. The Bank's counsel, Barrett, Burke, Wilson, Castle, Daffin & Frappier, L.L.P. (Barrett Burke), submitted a billing statement which contains a narrative of the work performed, the attorney or paralegal performing the work, the time expended for each entry, and the resulting fee for each entry. The billing statement reflects total fees and expenses of \$1,314.39, consisting of fees of \$1,147.50 and expenses of \$166.89. The Bank does not, however, seek reimbursement of this amount. Apparently, by agreement with Barrett Burke, the Bank is charged \$400.00 in fees plus expenses incurred for prosecuting the stay motion. Accordingly, the Bank seeks reimbursement of \$400.00 in fees and \$166.89 in expenses. The Debtors do not oppose payment of these fees. The Chapter 13 Trustee objects because such fees and expenses exceed the \$375.00 typically allowed on a creditor's stay motion. This standard fee is derived from the Standing Trustee's Guidelines for Compensation in Chapter 13 Cases dated October 12, 1998, which states that the "trustee will not object to creditors' attorney's fees of \$375.00 including expenses for the bringing of an action to lift stay in the event of a post-petition default by the debtor." Such guidelines are included as an Appendix to the Chapter 13 Trustee's Guidelines dated October 13, 1998, which were promulgated in accordance with Rule 2015.5 of the Local Bankruptcy Rules for the Northern District of Texas.¹

¹Local Bankruptcy Rule 2015.5 grants the Trustee authority to promulgate certain guidelines and states:

The standing chapter 13 trustee may from time to time publish and file with the clerk 'trustee guidelines' on matters such as valuation of consumer goods, capitalization rates, amount and rate of payment of debtors' attorney fees, and other issues pertaining to confirmation or modification of a chapter 13 plan. Any chapter 13 plan or modification conforming to such trustee guidelines will be deemed to have the trustee's recommendation, unless otherwise expressly stated by the trustee.

The Standing Trustee's Guidelines for Compensation in Chapter 13 Bankruptcy Cases state they are issued pursuant to 98-4 paragraph 10. *See* Northern District of Texas General Order 98-4.

As a result of the Trustee's guidelines and the practice that has developed in this court, the sum of \$375.00 has, in effect, been presumed reasonable without further scrutiny. This does not necessarily mean, however, that fees and expenses exceeding \$375.00 are deemed unreasonable. The Chapter 13 Trustee also questions whether a formal fee application is required given the requested fees and expenses exceed the amount presumed reasonable. The billing statement submitted by Barrett Burke provides the court with sufficient information to determine whether the fees and expenses requested here should be allowed. The filing of a formal fee application in this case is unnecessary as it would simply serve to drive-up the costs as the Bank may well be entitled to recover the fees incurred in preparation of the fee application. *See In the Matter of Braswell Motor Freight Lines, Inc.*, 630 F.2d 348, 350 (5th Cir. 1980); *In the Matter of Lawler*, 807 F.2d 1207 (5th Cir. 1987).²

As the case involves a post-confirmation default and motion, § 506(b) of the Bankruptcy Code is not invoked.³ *See In the Matter of T-H New Orleans Limited Partnership*, 116 F.3d 790 (5th Cir. 1997); *Telfair v. First Union Mortgage Corp.*, 216 F.3d 1333, 1338 (11th Cir. 2000); *In re Anderson Grain Corp.*, 222 B.R. 528, 531 (Bankr. N.D. Tex. 1998). Accordingly, the allowance of attorney's fees for services performed post-confirmation are governed by state law.

²The court would note, however, that the creditor has the burden to establish that the requested fees and expenses are reasonable. To meet this burden, the creditor must provide information that is sufficient to allow the court, as well as the trustee, debtor, and other parties in interest, to evaluate and analyze the reasonableness of the fees. In most cases, the filing of a full-blown fee application is needed and expected by the court. *See In re Anderson Grain Corp.*, 222 B.R. 528, 531 (Bankr. N.D. Tex. 1998). It is simply unnecessary, burdensome, and not cost effective to require a full-blown fee application on a request for reimbursement of fees by a creditor on a simple stay motion.

³11 U.S.C. § 506(b) states that:

to the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

In re Collins, No. 96-61452 (Bankr. E.D. Tex. Oct. 2, 2000) (unpublished opinion); *In re Lichty*, 251 B.R. 76 (Bankr. D. Neb. 2000).

Both the note and the deed of trust allow recovery of attorney's fees and expenses. Under § 38.001(8) of the Texas Civil Practice and Remedies Code, "[a] person may recover reasonable attorney's fees from an individual or corporation, in addition to the amount of a valid claim and costs, if the claim is for: . . . (8) an oral or written contract." TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(8) (Vernon 1999).

The Bank is, therefore, entitled to recover reasonable attorney's fees and costs arising from the post-confirmation default. The court has reviewed the billing statements submitted by Barrett Burke and, while the court questions the reasonableness of fees resulting from a billing rate of \$225.00 on a simple stay motion filed with this court, it is not necessary to specifically address the reasonableness of the billing rate because the \$400.00 in fees and \$166.89 in expenses is certainly within the range of fees and expenses that the court would consider reasonable for the services performed by the Bank's counsel in this case. The Fifth Circuit has held that the lodestar method is applied in determining the reasonableness of attorney's fees. *Matter of Lawler*, 807 F.2d 1207 (5th Cir. 1987). This involves multiplying the hours spent on a case times a reasonable hourly rate. *Id.* The court then adjusts as necessary the lodestar by considering subjective factors. *Id.* Obviously, given the time expended here and the amount involved, an exhaustive analysis is unnecessary. The court, therefore, finds that the requested fees and expenses of \$566.89 are reasonable and should be paid by the Debtors to the Bank for reimbursement of the fees and expenses incurred by the Bank. The court will enter an appropriate order in accordance with this Memorandum Opinion and will direct the parties to submit to the

court, within fifteen days of entry of the order, an order reflecting their agreement on the stay motion, including the fees and expenses approved herein.

Signed January 31, 2001.

Robert L. Jones
UNITED STATES BANKRUPTCY JUDGE